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FILED

APRIL 7, 2005

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
OAL DOCKET No. BDS 322-04

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

Administrative Action

MARK S. DAVIS, D.P.M.
License No. 25MD002618

CONSENT ORDER
OF REVOCATION

TO PRACTICE PODIATRY IN THE STATE OF :
NEW JERSEY

This matter was opened to the New Jersey State Board of Medical Examiners (hereinafter the "Board") upon notification that Mark S. Davis, D.P.M. (hereinafter "Respondent") had been arrested and charged in Monmouth County with multiple criminal offenses, to wit: attempting to commit murder, in violation of N.J.S.A. 2C:5-1; aggravated assault, in violation of N.J.S.A. 2C:12-1(b)(9); unlawful possession of a weapon for an unlawful purpose, in violation of N.J.S.A. 2C:39-4(a); knowing unlawful possession of a stun gun, in violation of N.J.S.A. 2C:39-3(h); knowingly possessing a handgun without first having obtained a permit to carry, in violation of N.J.S.A. 2C:39-

5(b); committing **burglary** by entering a structure that **was** not opened to the public, in violation of **N.J.S.A. 2C:18-2(a)(1)**; and committing the offense of theft of moveable property, in violation of **N.J.S.A. 2C:20-3(a)**.

Attorney General Peter Harvey by Deputy **Attorney** General **Swang** OOfiled with the Board an Order **to** Show Cause, Notice of Hearing, Verified **Complaint**, **Letter** Brief, and supporting documents on November 25, 2003. Within **the** Verified Complaint Respondent **was charged**, inter alia, with engaging in **professional** misconduct, acts of dishonesty, **and** acts constituting a crime or offense involving moral turpitude **or** relating **adversely** to the activity regulated **by** the Board. The Verified Complaint further alleged that Respondent's conduct demonstrated his lack of good moral character, that his **drug** use **impaired** his ability to practice **podiatry with reasonable skill and safety**, **and** that he **was** presently incapable of discharging the functions of a licensee in a manner consistent with the public's health, safety, and welfare. On December 23, **2003**, the Board **ordered** the temporary suspension of Respondent's **license** to practice podiatric **medicine and surgery** in the State of New Jersey effective January 12, 2004.

On February 25, 2004, Respondent was arrested and charged in Monmouth County with additional criminal acts, to wit: unlawful possession of an **expandable** metal baton, in violation of **N.J.S.A. 2C:39-3(e)**; tampering **with a** witness, in violation of **N.J.S.A. 2C:28-5(a)**; and hindering apprehension or prosecution, in violation of **N.J.S.A. 2C:29-3(b)(3)**. On or about March 18, 2004, indictments were handed **up** in Monmouth County charging Respondent with further crimes, including, but not necessarily limited to: carjacking, in violation of **N.J.S.A. 2C:15-2(a)(1)** and/or **N.J.S.A. 2C:15-2(a)(2)**, and/or **N.J.S.A. 2C:15-2(a)(4)**; **aggravated** assault, in violation of **N.J.S.A. 2C:12-1(b)(7)**; theft of moveable property, specifically a **car**, in violation of **N.J.S.A. 2C:20-3(a)**;

unlawful possession of **a weapon**, in violation of **N.J.S.A. 2C:39-5(b)**; conspiracy to commit the crime of carjacking and/or aggravated arson, in violation of **N.J.S.A. 2C:5-2** and/or **2C:17-1(a)(2)**; unlawful possession of **a controlled dangerous substance**, in violation of **N.J.S.A. 2C:35-10(a)(1)**; theft of services, in violation of **N.J.S.A. 2C:20-8(i)** and **(j)**; and possession of forgery devices, in violation of **N.J.S.A. 2C:21-1(c)**.

On **April 2, 2004**, an indictment **was filed** in the United States District Court for the Southern District of New York charging Respondent with conspiracy to commit wire fraud **and** mail fraud, in violation of **18 U.S.C. §§ 1341, 1343, 1349**, and retaliating **against** a witness, in violation of **18 U.S.C. 1513**. Said charges **were** based on allegations that Respondent **engaged** in *a* scheme **to** defraud Medicare and **private** insurers **by** submitting and causing to be submitted false and misleading claims for **payment** of podiatric services purportedly provided to patients of **his** podiatry practices in Staten Island, New **York** and Toms River, New Jersey, and that Respondent retaliated against another podiatrist who **was** cooperating **with** federal investigators in their investigation of the insurance fraud scheme.

On September **7**, 2004, a **superceding** information **was** filed in the United States District Court for the Southern **District** of New **York** alleging the federal charges of wire and **mail** fraud and witness retaliation contained in the **April 2, 2004** indictment **as** well as seeking criminal forfeiture of property, real or personal, that constitutes or is derived, directly or indirectly, from gross **proceeds** traceable **to** the commission of **a** federal health care offense, pursuant to **18 U.S.C. § 982(a)(7)**. On September **7**, 2004, Respondent pled guilty in federal court in the Southern District of New **York to** the charges contained in said superceding information. On **January 26**, 2005, Respondent was

sentenced in federal court in New York, inter alia, to serve five years and three months in prison and to pay \$1,055,549.00 in restitution.

On February 18, 2005, Respondent **pled** guilty in Monmouth County to state charges of aggravated assault, conspiracy to commit arson, burglary, possession of a weapon with an unlawful purpose, possession of a controlled dangerous substance, tampering with a witness, and theft of services. Respondent will be sentenced on March 18, 2005.

Respondent acknowledges that his conduct, to which he **admitted** by pleading guilty to the state and federal criminal charges discussed herein, constitutes professional misconduct, acts of dishonesty, and acts constituting a crime or offense involving moral turpitude or relating adversely to the activity regulated by the Board. Respondent further acknowledges that said conduct demonstrates his lack of good moral character; that he presently is incapable of discharging the functions of a licensee in a manner consistent with the public's health, safety, and welfare; and that he has violated an insurance fraud prevention law or act of another jurisdiction. Accordingly Respondent acknowledges that said conduct provides a basis for discipline by the Board pursuant to N.J.S.A. 45:1-21(b), (e), (f), (i), (k), and (l), and constitutes his failure to fulfill the ongoing statutory requirement of good moral character, which is a requirement of licensure pursuant to N.J.S.A. 45:9-6.

Respondent, through counsel, now seeks leave to voluntarily surrender his license to practice podiatry in the State of New Jersey, to be **deemed** a revocation of said license, in accordance with the terms of this Order and pursuant to his plea agreement with the Monmouth County Prosecutor's Office.

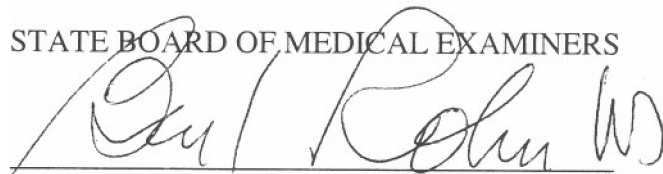
The Board being satisfied that entry of the within Order is adequately protective of the public health, safety, and **welfare**, and being satisfied **that p o d** cause exists for entry of the within Order,

IT **IS** on this 30th day of March, 2005

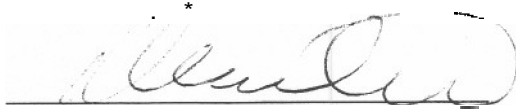
ORDERED:

1. Respondent, Mark **S.** Davis, D.P.M., is hereby granted **leave** and shall immediately surrender his license to practice **podiatry** in the **State** of New Jersey. Said surrender shall be deemed a revocation of his license.
2. Respondent shall return his original New Jersey license, any biennial registration cards in his possession, and his **original** State **CDS** registration to the New Jersey State Board of Medical Examiners, Post Office Box 183, Trenton, New **Jersey** 08625-0183, upon his receipt of **a filed** copy of this Order.
3. Respondent **shall** immediately notify the Drug Enforcement Administration of the entry of the within Order.
4. Respondent shall comply with the attached "Directives Applicable to **Any** Medical Board Licensee Who Is Disciplined or Whose Surrender of Licensure **Has** Been Accepted," which Directives are incorporated herein by reference.
5. This Order fully resolves the allegations of the Amended **Verified** Complaint pending in the Office of Administrative Law and bearing docket number BDS 322-04.

STATE BOARD OF MEDICAL EXAMINERS

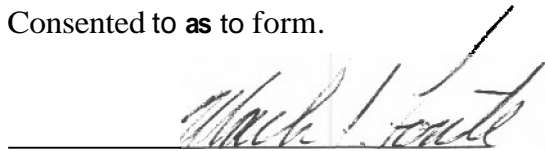

Bernard Robins, M.D., **E.A.C.P.**, President

I have read and understood the
foregoing **Order and agree** to
be bound by its terms.



Mark S. Davis, D.P.M.

Consented to **as** to form.



Mark J. Fonte, Esq.

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the addendum to these directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has **been** revoked, suspended for one (1) **year** or more or permanently surrendered must remove signs and take affirmative action to stop advertisements **by** which his/her eligibility to practice is represented. The licensee must also take **steps** to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a **group** practice title, it shall be deleted. Prescription pads bearing the licensee's name **shall be** destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing **services** at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for **less** than **one** year, prescription **pads** and medications need not be destroyed but must **be** secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee **for** professional services rendered **by** him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable **value** of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective **date** of the Board action.

A licensee who **is** a shareholder in a professional service corporation organized to engage in the professional practice, **whose** license **is** revoked, surrendered or suspended for a **term** of one (1) year or more shall **be** deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest *in* the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the **Board** a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional **service** corporation, the corporation must **be dissolved** within 90 **days** of the licensee's disqualification.

4. Medical Records

If, **as** a result of the Board's action, a practice is closed **or** transferred to another location, the licensee shall ensure that during the three (**3**) month period following the effective date of the disciplinary order, a **message** will **be** delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers **of** the licensee (or his/her attorney) assuming custody of the records. The **same** information shall **also** be disseminated by means of a notice to **be** published at least once **per** month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice **was** conducted. At the end of the three month period, the licensee **shall** file with the Board the **name and** telephone number of the contact person who will **have access** to medical **records** of former patients. Any change in that individual or his/her telephone number **shall** be promptly reported to the Board. When a patient or his/her representative **requests** a copy **of** his/her medical record or **asks** that record be forwarded to another health care provider, the

licensee shall promptly **provide** the **record** without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole **or in** part, which is conditioned upon compliance with a probation **or** monitoring requirement, the licensee **shall** fully cooperate with the **Board** and its designated representatives, including the Enforcement Bureau of the Division **of** Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall **be** at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, **but** is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner **may** include, **but** is not limited to, practitioner cooperation in providing **releases** permitting unrestricted access to records and other information to the extent permitted **by** **Law** from any treatment facility, other treating practitioner, support group or other individual/facility involved in the **education**, treatment, monitoring or oversight of the practitioner, or maintained **by** a rehabilitation program for impaired practitioners. If bodily substance monitoring **has** been ordered, the practitioner shall fully cooperate **by** responding to a demand for breath, **blood**, urine **or** other sample in a timely manner and providing the designated sample.

ADDENDUM TO THE DIRECTIVES

Any licensee who is the subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at **the** time that the **order** is signed, if it is **entered by** consent, or immediately after **service** of a fully executed order entered after a hearing. The information required here *is* necessary for the Board to fulfill its reporting obligations:

Social Security Number': _____

List the **name and address** of any and all Health Care Facilities with which you are affiliated:

List the names and **addresses** of any and all Health Maintenance Organizations with which **you** are affiliated:

Provide the **names and addresses** of every person with whom **you** are associated in your professional practice: (You may attach a **blank** sheet of stationery bearing this information).

NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer **will** be informed of the existence ~~of~~ the order and a copy will be provided **if** requested. All evidentiary hearings, proceedings **on** motions or other applications which **are** conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, **upon** request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which **is** based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or **official** actions, such as revocation or suspension of a license (and the length of **any** such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board **refuses** to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with **an** agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization **on** a monthly basis.

Within the month following entry of an order, **a** summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary **will** appear in the minutes of that Board meeting, which are also made available to those **requesting** a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the **orders** entered **by** the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.